

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
LICENSE COMMUNICATIONS SERVICES,	)	File No. 0002919008
INC.	)	
Industrial/Business Pool Station WPMP213	)	

**ORDER ON RECONSIDERATION**

**Adopted: March 8, 2011**

**Released: March 9, 2011**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* Mobile Relay Associates (MRA) seeks reconsideration of the action of the Wireless Telecommunications Bureau's Mobility Division (Division) dismissing as moot MRA's request that the Division modify the license of License Communications Services, Inc. (LCS) for Industrial/Business Pool Station WPMP213.<sup>1</sup> MRA argues that its request was not moot, and should have been addressed on the merits. We agree with MRA that its request was not moot, but conclude that it nonetheless should not have been granted. Consequently, we deny MRA's petition for reconsideration.

2. *Background.* Station WPMP213 originally was authorized to operate at three locations in Southern California on three channels with 11.2 kilohertz emission designators. In 2007, LCS filed the above-captioned application to add an additional site, operating on those and other frequencies with 11.2 kHz emission designators. In 2008, Comm Enterprises, LLC (Comm Enterprises) opposed the application, on the grounds that the proposed operations did not provide it sufficient interference protection, as required by the Land Mobile Communications Council (LMCC) procedures for evaluating adjacent channel interference in the 470-512 MHz band using the interference criteria of TIA/EIA/TSB-88 (TSB-88).<sup>2</sup> While the Comm Enterprises petition was pending, LCS amended the application to add another site, and to add frequencies at the existing locations, with 11.2 kilohertz emission designators. The Division returned the application to allow LCS's frequency coordinator to confirm its frequency coordination,<sup>3</sup> then LCS amended the application to reduce the emission designators from 11.2 kilohertz to 4 kilohertz, and its frequency coordinator stated that the proposed operations would thus comply with TSB-88. Because Comm Enterprises objected to operations that LCS no longer proposed, the Division

<sup>1</sup> See Petition for Reconsideration filed on November 30, 2010 by Mobile Relay Associates (Reconsideration Petition).

<sup>2</sup> See Filing Freeze to be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kilohertz "offset" channels in the 470-512 MHz frequency band. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997). The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability. See LMCC Consensus, Attachment at 2.

<sup>3</sup> See Return Letter Ref. No. 4809484 (December 3, 2008).

dismissed its petition as moot,<sup>4</sup> and granted LCS's application on March 2, 2009.<sup>5</sup> Due to an administrative error, the application was granted with both 4 kilohertz and 11.2 kilohertz emission designators, though it had been amended to request only 4 kilohertz emission designators.

3. On October 12, 2010, MRA filed a request that the Division correct and modify LCS's license for Station WPMP213 by removing certain frequencies that had been added when the above-captioned application was granted.<sup>6</sup> MRA argued that the application should not have been granted because LMCC did not establish interference protection criteria for applications with 4 kilohertz emission designators until after LCS had first applied for the frequencies.<sup>7</sup> MRA also argued that the application should not have been granted with 4 kilohertz emission designators unless LCS could demonstrate that the operations complied with TSB-88.<sup>8</sup> Finally, MRA stated that even if grant of the application was appropriate, the license should be corrected to delete the 11.2 kilohertz emission designators and reflect only 4 kilohertz emission designators.<sup>9</sup>

4. On November 3, 2010, the Division's licensing staff corrected the license by removing the erroneous 11.2 kilohertz emission designators.<sup>10</sup> On November 10, 2010, the Division dismissed MRA's petition as moot, on the grounds that it objected to 11.2 kilohertz emission designators that were no longer on the license.<sup>11</sup> MRA now seeks reconsideration of the dismissal, arguing that the removal of the 11.2 kilohertz emission designators did not moot its request that the challenged frequencies be removed altogether.<sup>12</sup>

5. *Discussion.* While a request is moot if requested alternative relief is granted,<sup>13</sup> we agree with MRA that its request that LCS's license for Station WPMP213 be corrected to delete the 11.2 kilohertz emission designators merely supplemented, and was not an alternative to, MRA's request to

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<sup>4</sup> See Letter dated February 17, 2009 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Robert J. Keller, counsel for Comm Enterprises, Inc.

<sup>5</sup> Comm Enterprises filed a petition for reconsideration of the grant, arguing that the amendment was insufficient to resolve the potential interference demonstrated by the Comm Enterprises petition, and the application should have been dismissed or returned to allow LCS's frequency coordinator to demonstrate compliance with TSB-88. See Petition for Reconsideration filed April 1, 2009 by Comm Enterprises, LLC. The Division denied the petition for reconsideration on the grounds that Comm Enterprises had presented no evidence that the amended application did not comply with TSB-88. See License Communications Services, Inc., *Order on Reconsideration*, 24 FCC Rcd 10858, 10859 ¶ 5 (WTB MD 2009). Thus, MRA's assertion that the Comm Enterprises petition for reconsideration remains pending, see Reconsideration Petition at 4 n.3, is incorrect.

<sup>6</sup> See Petition for Correction and Modification of License filed October 12, 2010 by Mobile Relay Associates (Modification Petition).

<sup>7</sup> See *id.* at 4-5.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> Correction of a ministerial error can be done more than thirty days after grant of an application. See, e.g., California Water Service Company, *Memorandum Opinion and Order*, 18 FCC Rcd 11609, 11619 ¶ 18 (2003).

<sup>11</sup> See Letter dated November 10, 2010, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to David J. Kaufman, counsel for Mobile Relay Associates.

<sup>12</sup> See Reconsideration Petition at 4. LCS filed an opposition. See Opposition to Petition for Reconsideration filed on December 3, 2010 by License Communications Services, Inc. MRA filed a reply. See Reply to Opposition to Petition for Reconsideration filed on December 10, 2010 by Mobile Relay Associates.

<sup>13</sup> See Request for Review of a Decision by the Universal Service Administrator or Alternative Relief by Equant Inc., *Order*, CC Docket No. 96-45, 25 FCC Rcd 961, 961 ¶ 1 (WCB TAPD 2010).

modify the license to delete the offending frequencies.<sup>14</sup> Consequently, MRA's request for license modification should have been addressed despite the mootness of its request for license correction.

6. Turning to the merits of the modification request, we conclude that it should be denied. MRA argued that because the frequency coordinators had not established interference protection criteria for applications with 4 kilohertz emission designators when LCS initially applied for the frequencies in 2007, permitting LCS to amend the application to request 4 kilohertz emission designators was unfair to others wishing to apply for those frequencies with 4 kilohertz emission designators, over whom LCS gained a temporal advantage by filing a then-defective initial application.<sup>15</sup> This argument may have constituted grounds for granting a petition to deny or petition for reconsideration of the grant of the application,<sup>16</sup> but MRA filed a post-grant request that LCS's license be modified, which requires a more persuasive showing.<sup>17</sup> As we have stated before, "because MRA did not raise these arguments until after the licensing action[] had become final, the issue is not whether any procedural error occurred in the processing of [the] application, but whether license modification would "promote the public interest, convenience, and necessity."""<sup>18</sup> Thus, "the fact that LCS's application may have been improperly granted does not by itself require license modification."<sup>19</sup> We conclude that license modification is not warranted on the sole grounds that an application that was proper when it was granted was filed prematurely.

7. Regarding MRA's suggestion that LCS be required to demonstrate that its 4 kilohertz operations comply with TSB-88, we note that no TSB-88 analysis is required under the circumstances presented (*i.e.*, for an application to use narrowband equipment with a 4 kHz occupied bandwidth on frequencies 12.5 kHz offset from a 25 kHz incumbent), because there is no spectral overlap.<sup>20</sup>

8. *Conclusion.* We agree with MRA that its request for modification of LCS's license for Station WPMP213 should have been addressed on the merits, rather than dismissed as moot. We conclude, however, that MRA did not demonstrate that license modification was warranted. Consequently, we deny MRA's petition for reconsideration.

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed on November 30, 2010 by

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<sup>14</sup> See Reconsideration Petition at 4.

<sup>15</sup> See Modification Petition at 4-5.

<sup>16</sup> In light of our decision herein, we need not address MRA's claim that no frequency coordinator "could have lawfully filed an application for these channels at these locations" in 2007. See *id.* at 2.

<sup>17</sup> See, e.g., National Science and Technology Network, Inc., *Order on Further Reconsideration*, 25 FCC Rcd 10628, 10629-30 ¶ 4 (WTB MD 2010).

<sup>18</sup> National Science and Technology Network, Inc., *Order on Reconsideration*, 22 FCC Rcd 20973, 20975 ¶ 9 (WTB MD 2007) (*NSTN*) (quoting Samuel Moses, *Order on Reconsideration*, 22 FCC Rcd 7425, 7427 ¶ 6 (WTB MD 2007) (quoting 47 U.S.C. § 316(a)(1)), *review withdrawn*, Elizabeth R. Sachs, *Letter*, 24 FCC Rcd 9018 (WTB MD 2009)), *rev'd on other grounds*, *Memorandum Opinion and Order and Order Proposing Modification*, 25 FCC Rcd 559 (2010); see also Pacific Gas and Electric Company, *Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22767-68 ¶ 16 (2003) ("License modification pursuant to Section 316 should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity.").

<sup>19</sup> License Communications Services, Inc., *Order*, 24 FCC Rcd 3228, 3230 ¶ 7 (WTB MD 2009) (citing *NSTN*, 22 FCC Rcd at 20975-76 ¶ 10).

<sup>20</sup> See Mark A. Lidikay, *Order on Reconsideration*, 25 FCC Rcd 15895, 15896-87 ¶¶ 4-7 (WTB MD 2010).

Mobile Relay Associates IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Roger S. Noel  
Chief, Mobility Division  
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